

CHAPTER NO. 527

SENATE BILL NO. 2259

By Dixon, Graves, Kilby, Burchett, Crutchfield, Trail, Cooper

Substituted for: House Bill No. 2339

By Bowers, Brenda Turner, John DeBerry, Henri Brooks

AN ACT to amend Tennessee Code Annotated, Title 56, relative to the use of credit scores in determining personal insurance rates and renewability.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 5, is amended by adding Sections 2 through 8 of this act as a new part thereto:

SECTION 2. As used herein, unless the context otherwise requires:

(1) "Adverse action" means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of personal insurance. An offer of placement with an affiliate insurer does not constitute adverse action, a refusal to insure, cancellation or nonrenewal of coverage.

(2) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(3) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.

(4) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(5) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related shall not be considered "credit information," regardless of whether it is contained in a credit report or in an application, or is used to calculate an insurance score.

(6) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(7) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole

or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

(8) "Personal insurance", for the purposes of this part, means private passenger automobile, homeowners, motorcycle, manufactured home owners, non-commercial dwelling fire insurance, boat, personal watercraft, and recreational vehicle policies when those policies are individually underwritten for personal, family or household use.

SECTION 3. An insurer authorized to do business in Tennessee that uses credit information to underwrite or rate risks for personal insurance, shall not:

(1) Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within ninety (90) days from the date the personal insurance policy is first written or renewal is issued.

(2) Use credit information unless no later than thirty-six (36) months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. The insurer is not required to comply with this subsection if:

(A) The insured is in the most favorably-priced tier of the insurer or within a group of affiliated insurers, for the type of policy covering the insured;

(B) If the insurer has determined not to use credit information in its re-evaluation of the insured upon renewal; or

(C) If the insurer provides a notice to the insured on an annual basis of the insured's right to voluntarily request that their insurance credit score be rerun and reevaluated based on the current information available for the next effective renewal date of the insured's policy. A notice provided under this section shall be in writing in clear and concise language and shall not contain any information other than what is necessary to notify the insured of this right. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once every twelve (12) months.

Nothing in this subsection shall be deemed to require any insurer to use credit information in rating or underwriting. The commissioner may promulgate rules to effectuate the provisions of this section.

(3) Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance.

(A) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for each person's own credit information.

(B) Inquiries relating to insurance coverage, if so identified on a consumer's credit report.

(C) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home

mortgage industry and made within thirty (30) days of one another, unless only one (1) inquiry is considered.

(D) Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty (30) days from one another, unless only one (1) inquiry is considered.

(E) Collection accounts with a medical industry code, if so identified on the consumer's credit report.

(4) Deny, cancel or nonrenew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information.

(5) Base an insured's renewal rates for personal insurance solely upon credit information, without consideration of any other applicable factor independent of credit information.

(6) Take an adverse action against a consumer solely because he or she does not have a credit account, without consideration of any other applicable factor independent of credit information.

(7) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance, unless the insurer either treats the consumer as if the consumer had neutral credit information as defined by the insurer or unless the insurer treats the consumer in a manner otherwise approved by the Commissioner of Commerce and Insurance.

(8) Use an insurance score that is calculated using income, gender, address, ethnic group, religion, marital status, nationality, education, or occupation of the consumer as a factor. Nothing in this subdivision shall preclude an insurer from underwriting personal insurance on the basis of information in the insurance application that is not credit information.

SECTION 4. If an insurer takes an adverse action based on factors that include credit information, the insurer must provide notice to the consumer that an adverse action has been taken. That notice must contain the reason or reasons for the adverse action, described in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notice must include a description of up to four (4) factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history," "poor credit rating," or "poor insurance score" does not meet the explanation requirements of this section. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this section.

SECTION 5. An insurer shall indemnify, defend, and hold an insurance producer harmless from and against all liability, fees and costs arising out of or relating to the actions, errors or omissions of an insurance producer who obtains or uses credit history and/or insurance scores for an insurer, provided the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or act. Nothing in this section shall be construed to provide an applicant or insured with a cause of action that does not exist in the absence of this section.

SECTION 6. Insurers that use insurance scores to underwrite or rate risks must file their scoring models or other scoring processes with the Department of Commerce and Insurance. A filing that includes insurance scoring shall include loss experience justifying the use of credit information. Such filings shall be kept confidential by the Commissioner of Commerce and Insurance and shall not be construed to be a public record pursuant to Title 10, Chapter 7.

SECTION 7. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within thirty (30) days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last twelve (12) months of coverage or the actual policy period.

SECTION 8. (a) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy, if such consumer has previously been provided a disclosure statement.

(b) Use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."


SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect on January 1, 2005, the public welfare requiring it.

PASSED: March 29, 2004



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 13th day of April 2004



PHIL BREDEBEN, GOVERNOR